

REMARKS

Claims 1-15 are rejected under 35 U.S.C. §112, second paragraph. Claim 5 is objected to having minor informalities. Claims 1-6 and 11 are rejected under 35 U.S.C. §102(b) as being anticipated by, or in the alternative, under 35 U.S.C. §103(a) as being unpatentable over, Kean et al., U.S. Patent 5,491,186, hereinafter "Kean". Claims 7-10 are rejected under 35 U.S.C. §103(a) over Kean as applied to either U.S. Patent 5,543,301 (hereinafter Shutt '301) or U.S. Patent 6,025,027 (hereinafter Shutt'027).

By way of this amendment, claims 1 and 5 have been amended to correct minor informalities. Applicants thanks the Examiner for pointing out these informalities.

The Examiner has rejected claim 1 by stating that the Kean reference appears to inherently possess an R-value of at least 4.1 per inch. Applicants respectfully traverse the Examiner's contention for the following reasons.

Applicants have submitted an affidavit under 37 C.F.R. 1.132 by Dr. David Yarbrough explaining why it is improper to assume that a given fiber blend will necessarily result in a particular R-value. In particular, Dr. Yarbrough explains that an R-value can only result from a standardized test, and that *a priori* evaluations of R-value are not practiced in the art. Dr. Yarbrough also discusses various reasons why a given blend can actually result in a wide variety of R-values based upon variables not apparent to the eye. Because the Kean reference makes no claim as to an R-value, and because the fiber specifications mentioned in Kean would need to be tested to determine their thermal characteristics, it is Dr. Yarbrough's determination that the inherency conclusion is incorrect and should be withdrawn.

Applicants note that according to MPEP 2112:

“The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic ...To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' ”

Applicants note that Dr. Yarbrough's declaration establishes that the R-value of the Kean reference will not necessarily result in a particular R-value, as required by the MPEP to maintain a claim of inherency. Hence, it is respectfully believed that Dr. Yarbrough's declaration is sufficient to refute the Examiner's rejections based upon inherency. Reconsideration of the 35 U.S.C. §§102/103 rejections is respectfully requested as it is believed that Kean does not teach or suggest, inherently or otherwise, a fiber blend having an R-value of at least 4.1 per inch.

Regarding claims 2-4, the Examiner has cited to Kean at Col. 1, lines 60-67 for the limitation of “2-5% adhesive fiber”. Specifically, claim 3 of the present application recites “2% adhesive fiber”. Applicants note that Kean does not disclose a fiber blend having less than 2.5% adhesive fiber. In fact Kean teaches away from such a blend:

Binder fiber as used herein includes a wide variety of thermoplastic fibers having melting point below the decomposition temperature of the secondary fiber. The binder is present in an amount of about from 2.5 to 12 percent by weight of the insulating [sic] batt. Preferably, less than about 10 weight percent, based on the total composition, of binder fiber is used, and about from 4 to 10 percent by weight has been found to be particularly satisfactory. In general, less than about 2.5 percent binder fiber does not provide a satisfactorily bonded product, while more than about 12 percent binder often increases the density of the final product more than desired. (See Col. 2, lines 35-46; emphasis added)

Accordingly, Applicants respectfully submit that claim 3 is allowable over Kean as this citation is a clear indication of the non-obviousness of this limitation.

Reconsideration and early allowance of the case is respectfully requested. If the Examiner has any questions regarding this application or this response, the Examiner is requested to telephone the undersigned at 775-848-5624.

Respectfully submitted,
LAW OFFICES OF TIMOTHY BRISSON.

Dated: Jan. 12, 2007

A handwritten signature in black ink, appearing to read 'Timothy Brisson', with a long horizontal flourish extending to the right.

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